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No. OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

October Term, 1996

CORNELL D. CORNISH,

Petitioner,

v.

DISTRICT OF COLUMBIA
COURT OF APPEALS

and

BOARD ON PROFESSIONAL RESPONSIBILITY,

Respondents.

Petition For A Writ of Certiorari
To The District of Columbia Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. May the District of Columbia weaken the First Amendment protection of religion, speech, press, publicity and association by suspending a patent and copyright lawyer in a reciprocal action from a sister state so as to ban his advertising as a patent and copyright lawyer by prior restraint without a hearing or the lawyer's consent because of a presumption that the sister state presumed that he was disabled from his disclosure of his anonymous membership in a spiritual fellowship called Al-Anon for over 8 years.

2. May the District of Columbia convert a federal question into a state question when a patent attorney claims lack of jurisdiction in the District and a sister state to treat the question of duty of candor to the U.S. Patent and Trademark Office as a reciprocal suspension action from a sister state instead of a First Amendment and Article 1, Section 8 question.

3. May the District of Columbia use the presumption of disability by a lawyer in a sister state to reverse the burden of proof in a redundant, reciprocal order from a sister state when there is no claim of disability by the lawyer and he claims lack of due process by unclean hands, breach of duty of candor and a redundant, reverse palming off of an abandoned name never registered on the rolls of attorneys in either jurisdiction so as to weaken the protection of the 14th Amendment for the lawyer without a conclusive showing of disability.

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Petition For A Writ of Certiorari
To The District of Columbia Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

ORDERS BELOW

1. Redundant Order In The Court Of Appeals Of Maryland, Misc Docket (Subtitle BV) No. 39, September Term, dated December 4, 1995, by reverse palming off, placing abandoned common law name and trademark Cornell D. Cornish, a name never registered on the rolls of attorneys admitted to practice in Maryland, on inactive status.

2. Order In The Court of Appeals of Maryland, Misc. Docket (Subtitle BV) No. 44, September Term, dated February 7, 1996, denying request for dissolution or amendment of December 4, 1995 Order of inactivity by reverse palming off.

3. Order from District of Columbia Court of Appeals, dated February 20, 1996, by reciprocity from the Maryland order, holding in abeyance respondent's request for an oral hearing, and Bar Counsel's proposed order, by reverse palming off, suspending Cornell D. Cornish, an abandoned common law name and trademark never registered on the rolls of attorneys admitted to practice in the District of Columbia, with a non-functionally identical discipline, and ordering a 30 day suspension to allow the lawyer to obtain counsel. (17a)

4. Irregular Order from the District of Columbia Court of Appeals, dated April 15, 1996, vacating courts order holding in abeyance Bar Counsel's proposed non-functionally identical, reciprocal, order of suspension of the abandoned name and trademark Cornell D. Cornish by reverse palming off, in a reciprocal proceeding from the irregular, Maryland Order of December 4, 1995. (10a)

5. Order from the District of Columbia Court of Appeals, dated May 23, 1996, denying petitioner's request for hearing and reconsideration of April 15, 1996, Suspension Order because of grave injustice (also denying request for elimination of abandoned, reverse palmed off, name and trademark from Order). (14a)

BASIS FOR JURISDICTION

The order of the District of Columbia Court of Appeals was entered on May 23, 1996. Jurisdiction is conferred by 28 U.S.C. § 1254, 1257(2) and (3), 2104, 2403(b), 1331.

RULES INVOLVED

District of Columbia Rules Of Professional Conduct: D.C. App. R. XI, §11(d) Reciprocal Discipline; and §13 (d), (e) — Incompetent and Incapacitated Attorneys

STATEMENT OF THE CASE

Summary Of Reasons For Granting The Writ

The Petitioner, Cornell D.M. Judge Cornish, a citizen of the United States, a resident of the District of Columbia, and a patent and copyright attorney (inactive in Maryland by affidavit dated 12/9/95 and Order dated 2/7/96), admitted in New York, admitted in the District of Columbia (Order of suspension not yet final), the U.S. Patent and Trademark Office (presently inactive without claim of disability and subject to reinstatement upon paying any fees due), suspended in the U.S. District Court of the Southern District of New York until reinstated in Maryland, and admitted in the U.S. Tax Court (Order to Show Cause in abeyance), requests that this Court issue a **Writ of Certiorari** to resolve a First Amendment conflict between the States, The U.S. Tax Court and the Second Circuit, and the U.S. Patent and Trademark Office, as to whether the burden of proof can be shifted without a show cause hearing in his present, correct legal, religious and common law name and trademark so as to suppress his publication of his commercial speech of that name by prior restraint, and whether he should be suspended without his consent, without a show cause hearing in a "suspension upon a claim of disability by attorney" under D.C. Bar Rule X, §13(e) so that the District can seize and hold his right of publication by prior restraint in custodia legis with unclean hands by reverse palming off an abandoned name not registered on the rolls of attorneys licensed to practice in the District of Columbia.

Petitioner exercised his First Amendment right to fulfill his duty of candor to the Maryland Court of Appeals by disclosing his membership in Al-Anon to Bar Counsel in 1988, and met with the Bar Counselor suggested by a judge on the Court

of Appeals of Maryland. No grievance because of disability resulted therefrom, because membership in Al-Anon, with or without heart disease, and meeting with an Al-Anon sponsor, cannot without conclusive proof be used as a basis of "suspension upon claim of disability by attorney."

Petitioner later exercised his First Amendment right to fulfill his Duty of Candor before the U.S. Patent and Trademark Office, a federal question on what is patentable, so as to assign his invention to his co-inventor after filing a provisional patent application as to improvements on an invention that was the subject matter of an earlier filed Design Patent Application. 37 CFR 1.56

Instead of accepting the assignment as a co-inventor, the latter asked the Maryland Grievance Commission for an advisory opinion as to his sole inventorship, but they lacked the jurisdiction to give such an opinion under Article 1, Section 8 and the First Amendment of the U.S. Constitution, which preempts the field of patents on inventions as a federal question, whereby Maryland and the District were without jurisdiction on this federal question, all of which is a proper issue for a **Writ of Certiorari.** *Sperry v. State of Florida,* 373 U.S. 379 (1963). *See also Jaffee v. Redmond,* No. 95-266, __ U.S. __, June 13, 1996; *Selling v. Radford,* 243 U.S. 46; *Theard v. U.S.,* 354 U.S. 278; *Staub v. City of Baxley, Ga.,* 355 U.S. 313; *Dpt. of Mtr. Veh. of State of Cal. v. Rios,* 410 U.S. 425; *White v. State of Md.,* 373 U.S. 59; *Public Affairs Associates, Inc. v. Rickover,* 369 U.S. 111, App. D.C. 1962; *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462; *Universal Interpretive Shuttle Corp. v. Washington Metropolitan Area Transit Commission,* 393 U.S. 106; *State of Rhode Island and Rhode Island Liquor Stores Association,* 94-1140, __ U.S. __, (May 13, 1996). Thereupon, the petitioner repeatedly asked for a hearing before Bar Counsel, but his requests were refused.

As an alternative to the requested advisory opinion, and the acceptance of the assignment by the co-inventor in accordance with Bar Counsel's approval, Bar Counsel suggested a mediated settlement of the concerns of the parties over the inventorship of the patent, whereby petitioner became inactive in Maryland by a non-disability, joint petition under his First Amendment right to petition the government for redress of his grievances against Bar Counsel for not giving him a hearing and not getting the co-inventor to accept the assignment in accordance with the urgings of Bar Counsel. To this end, the Bar Counsel prepared the joint petition, which was in part incomprehensible so that the original with the original Bar Counsel signature thereon on was never filed in the Court of Appeals (See appendix, p. 2a). However, an affidavit of voluntary inactivity was filed in petitioner's name, while a redundant petition was reverse palmed after being changed without two proper original signatures. The petition was redundant because it concerned an abandoned name never registered on the rolls of attorneys in Maryland because it had been abandoned by court order in the District of Columbia (See Appendix, p. 1a). It was converted into a redundant claim of disability by the Maryland court without a claim of disability by lawyer (See Appendix Rule XI, §13(e), on the presumption that petitioner's confidential association in a spiritual fellowship named Al-Anon was conclusive proof of disability. As shown by affidavit and letter evidence (See Appendix, p. 4a, 7a), however, Al-Anon made possible the retention of remarkably good health by giving up non-patent and copyright "pro bono" work in Maryland, and scrupulously adhering to a regime of exercise that creates a new life style affect, i.e., feeling, as an motivational tool, whereby the new life style can endure, i.e., "suffers lasting affects from open heart surgery in 1982 and he goes to rehabilitation every day and rests for some time thereafter."

Moreover, the Court of Appeals, with unclean hands and bias against the petitioner's name "Judge", that had nothing to do with any disability, insisted on redundantly issuing an order of inactivity (See "disability" Rule §13(e)) by reverse palming off an order of inactivity in an abandoned name that was never registered on the rolls of attorneys licensed to practice law in Maryland or the District of Columbia.

The District also has unclean hands by infectious unenforceability. To this end, there is no presumption that their reciprocal order of discipline reverses the burden of proof, since their order is functionally non-identical to a redundant order of discipline in a state that lacked clear and convincing evidence of disability, and lacked jurisdiction to issue an order of discipline on a federal question in a preempted field with unclean hands in the first place by reverse palming off a name never registered on the rolls of attorneys licensed to practice in the District of Columbia or Maryland. The District compounded the unclean hands of Maryland by infectious unenforceability by issuing their own order that by reverse palming off subverts the judicial machinery, denies petitioner a hearing, shifts the burden of proof without a show cause hearing, and subverts the protection of petitioner's First Amendment and due process rights under the Fourteenth Amendment.

The District, claims that they can shift the burden of proof without a show cause hearing by prior restraint of petitioner's right of speech on the basis that there is a conclusive "suspension upon a claim of disability by attorney" on the face of the orders themselves. Thus, their goal was to eliminate their burden of proof by suspending him with a non-functionally identical syspension by the application of reciprocity under D.C. App. Rule XI, §11(d) and §13(e) by eliminating §13(d), even though petitioner has repeatedly renounced and repudiated any such claim of attorney disability.

Petitioner claims that his inactivity for convenience by consent in a sister state does not weaken his First Amendment rights by shifting the burden of proof to him without his consent and without a show cause hearing in a reciprocal action in a state that suspends him from practice by seizing in custodia legis his unique, legal, religious and common law name, trademark, and the good will attached thereto, in a reciprocal state action by the reverse palming off with unclean hands of a defunct, abandoned name and trademark in a reciprocal action from a sister state.

The petitioner claims that the sister state and the reciprocal state lacked jurisdiction for their actions by preemption, refusal to disclose petitioner's lack of disability, which they well knew since 1988, and failure to claim any such disability in connection with heart disease or his Al-Anon membership. Thus, the question also arises as to whether the District could weaken his due process hearing right in the reciprocal suspension action by failure to give the oral hearing requested by petitioner, such as in 40 days as is required under federal jurisprudence. Still further, the question arises in the reciprocal state as to whether their unproved hypothesis of "suspension upon a claim of disaiblity by attorney" could be sustained to the effect that there was a per se claim of disability by the petitioner so that the burden of proof can be shifted without a show cause hearing by reciprocity, thus, to overcome the First Amendment's protection of commercial speech by eliminating the government's burden to prove that the "restriction directly and materially advances a substantial state interest in a manner no more extensive than necessary to serve that interest." *44 Liquormart, Inc. and Peoples super Liquor Stores, Inc. v. State of Rhode Island and Rhode Island Stores Association*, No. 94-1140, __ U.S. __, (May 13, 1996).

There is also a split on the point in the U.S. Tax Court and the U.S. District Court for the Southern District of New York,

since a reciprocal show cause hearing was granted in the U.S. Tax Court as a matter of right within 40 days as required in *Selling v. Radford,* 243 U.S. 46, (so far without a suspension as described in the transcript of the hearing), and the requested hearing was denied in the U.S. District Court of the Southern District of New York, and both jurisdictions recognized his current, uniquely designed legal, religious, and common law name and trademark, and the good will that are attached thereto in the various states under their jurisdiction and the jurisdiction of the patent and copyright offices, whereas both the District of Columbia and Maryland denied petitioner a hearing and their Orders inactivating and suspending the petitioner were made by reverse palming off and unclean hands, and without a show cause hearing. Md Rules (BV 13) (BV 10(d).

Procedural History

Petitioner has practiced his profession as an inventor and as a patent, trademark and copyright attorney since 1958. He filed a provisional patent application in his name and the name of another in accordance with his First Amendment right to Exercise his duty of candor before the U.S. Patent and Trademark Office. *See Jack Winter, Inc. v. Koratron Company, Inc., et al.,* 50 F.R.D. 225 (1970); *Kingsland, Commissioner of Patents v. Dorsey,* 338 U.S. 318 ((1949), and the lawyer's duty of candor to the U.S. Patent and Trademark Office set out by the United States Supreme Court in *Precision Instrument Mfg. Co. v. Automotive Maintenance Mach. Co.,* 324 U.S. 806, 818, 65 USPQ 133, 139 (1945), *See also A.B.Dick Co. v. Burroughs Co.,* 798 F.2d at 1396, 230 USPQ at 853). Md Ann Code Art 10, Sec. 1; 61 Op. Att. Gen. Md. 43.

In the subject case, Petitioner selectively consented for the convenience of the state of Maryland only to a mediation limited to the seizure and holding in custodia legis of petitioner's now

defunct, and abandoned name and trademark for the practice of non-patent law in Maryland only. There was no finding of disability for reasons of health as in *Atty. Griev. Comm. v. Kenney*, 339 Md. 578 or *In re Samuels*, 648 A. 2d 943 (D.C. 1994); no acquiescence and failure to object, as in *In re O'Brien*, 665 A. 2d 662 (D.C. 1995), where, unlike this case, no exceptions were filed; there was no sufficient proof of misconduct, as in *In re Velasquez*, 507 A.2d 145 (D.C. 1986); and in none of these cited cases was there a limited and restricted order of inactivity in Maryland only that resulted from a mediated settlement with Bar Counsel as a party in return for petitioner's assignment of his invention to his co-inventor at the convenience of the State of Maryland in accordance with petitioner's First Amendment right to disclose the fact that he was a member of Al-Anon, and file his invention in order to satisfy a federal question and his duty of candor to the U.S. Patent and Trademark Office.

The result of the District's suspension order is a prior restraint of petitioner's commercial free speech before the Patent and Copyright Offices, as well as in newspapers and directories in the reciprocal state and other states, whereby, by prior restraint, the reciprocal state could ban the lawful, truthful and non-misleading use of the lawyer's correct, current, legal, religious and common law persona and trademark and the good will attached thereto, such as in telephone book advertising and even in his suspension order, which, by reverse palming off and unclean hands, redundantly used a now defunct and abandoned name as a settlement in a mediation. The government's burden to prove that the lawyer is disabled and unable to practice law in the District of Columbia, was effectively eliminated despite his exceptions and his exercise of his First Amendment duty of candor before the U.S. Patent and Trademark Office and the Bar Counsels' Offices, as well as to bar counselors in both jurisdictions since 1988. See the lawyer's duty of candor to the U.S. Patent and Trademark

Office set out by the United States Supreme Court in *Precision Instrument Mfg. Co. v. Automotive Maintenance Mach. Co.*, 34 U.S. 806, 818, 65 USPQ 133, 139 (1945).

Thus, the Court of Appeals of the District of Columbia by the Doctrine of "infectious unenforceability" erroneously ordered that the restriction by prior restraint on petitioner's speech and right of publicity is valid, despite the attorney's compliance with his duty of candor before the U.S. Patent and Trademark Office and the Maryland Grievance Commission, and despite and undisputable lack of any claim of attorney disability. Those words are used no where in the petition.

The doctrine of "infectious unenforceability" was adopted in *Armor & Co. v. Wilson & Co.*, 168 F.Supp. 353, 119 USPQ 365 (N.D. Ill. 1958); the doctrine of unclean hands is discussed in *Guadiosi v. Mellon*, 269 F.2d 873, 882 (3d Cir.), *cert denied*, 361 U.S. 902 (1959). The doctrine of inequitable conduct is discussed in *17* AIPLA QJ 338, 356. The doctrine of reverse palming off is discussed in *Smith v. Montoro*, 648 F.2d 602 (9th Cir. 1981); and *Marling v. Ellison*, 218 USPC 702 (SD Fla. 1982). The seizure of property protected by the First Amendment is discussed in *Europa Books, Inc. v. Pomerleau*, 41 Md. App. 114; and the right of publicity is discussed in *Zacchini v. Scripps-Howard Broadcasting Co.*, 443 U.S. 562 (97 S.Ct 2849), and in petitioner's Amicus Curiae Brief in *Parker v. Chakabarty*, 477 U.S. 303, 206 USPQ 193 (S.C. 1980). *See also International News Service v. The Associated Press*, 248 U.S. 215.

C. Daniel Cornish, is an abandoned trademark registered on admission to the bar of the State of Maryland on 11/9/56 and before the U.S. Patent and Trademark Office on 11/5/58. Cornell D. Cornish is also an abandoned common law trademark. This is the name and common law trademark of petitioner's son, who has acquired good will in connection therewith. A still further abandoned trademark is Cornell

Daniel Cornish used on admission to the bar of the District of Columbia on 11/4/82. Obviously, there are significant and material differences between these marks in spelling, appearance, sound, meaning and commercial impression, as well as in their legal status as abandoned names and marks (trademarks and servicemarks), and as to their good will.

Cornell D.M. Judge Cornish, is an entirely different legal and religious name by court order, and also is a common law name, trademark and persona in accordance with a court order of September 13, 1990 by the Superior Court of the District of Columbia (See Appendix, p. 1a). Well established case law and long lasting and well established religious custom and law holds that a persona is changed by a name change. It is also well established that a persona has only one correct name to the exclusion of all other names after his name is changed by a court. *Brayton v. Beall,* 53 S.E. 641, 73 S.C. 308.

Jurisdiction is based upon: (1) 28 U.S.C. §1331 (federal question); (2) 28 U.S.C. §1257; (3) 28 U.S.C. §1254; (4) 28 U.S.C. §1257(2); and (5) S.C. Rule2403 (b).

Facts

The District of Columbia in a reciprocal action suspended the appellant without a show cause hearing based upon a mediated settlement in the State of Maryland leading to a redundant order relating to the already abandoned name "Cornell D. Cornish", which never appeared on the rolls of attorneys in Maryland. Thus, the order in Maryland was redundant. This order on its face was not only redundant, it was irregular by reverse palming off and was the result of unclean hands.

Bar Counsel, was without probable cause, and had prior knowledge that prevented him from petitioning for an order of inactivity by "suspension upon claim of disability by attorney." Petitioner's response to the request for an advisory

opinion, in the caption in his request for reconsideration to the Maryland Court's order of inactivity, referred to petitioner's inability to address an unreasonable demand for an advisory opinion on a federal question in a Maryland grievance proceeding because of the lack of jurisdiction to handle such a case under the preemption clause of Article 1, Section 8 of the U.S. Constitution. *Sperry v. State of Florida,* 137 U.S.P.Q. 578 (S.C. 1963). He also was unable to find an effective, clean and sober attorney familiar with Al-Anon who could handle his case (See Appendix, p. 21a, relating to counsel).

Clear, convincing and unquestioned evidence of reverse palming off, lack of disability, and irregularity has been supplied by petitioner. (See attached affidavit in appendix, p. 7a). This evidence also shows that Petitioner's inactive status in Maryland is not, was not, and could not be equated with "suspension upon a claim of disability by attorney" under Rule XI, 13(e). In any event, the court was without jurisdiction to equate inactivity with "suspension upon a claim of disability by attorney" under the Rules, whether or not the burden is on petitioner to terminate his inactive status under these Rules, because he never consented to such equating and was not on notice that such an equating was imminent or could take place, and the Rules thereon are functionally non-identical in the District from those in Maryland.

Reasons For Granting The Writ Are Substantial

A. The First Amendment precludes certain forms of regulation of free speech and purely commercial speech, including **the right of publicity to a lawyer's legal, religious and common law trademark, name and persona sa a patent attorney and an inventor before the U.S. Patent and Trademark Office in a provisional patent application that is preempted under Article 1,**

Section 8 of the U.S. Constitution, by a requirement of a duty of candor and his desire to assign his invention to his co-inventor, and that right is not destroyed in a reciprocal state by infectious unenforceability due to the lawyer's consent to become inactive in a sister state or a presumption in favor of reciprocal discipline, or "suspension upon a claim of disability by a lawyer."

B. The District of Columbia's unclean hands and reverse palming off of an abandoned name, and failure to use petitioner's correct persona, and his legal, religious and common law name and trademark as a patent, copyright and trademark attorney does not Directly Advance Its Interest In Protecting the Public To A Material Degree, Thereby Failing the Third Part Of The Central Hudson Test. (*Central Hudson Gas & Electric Corp. v. Public Service Commission of New York,* 447 U.S. 557 (1980).

Under the second part of the established **Central Hudson** test there is no presumption or proof that the petitioner is an alcoholic, or that he is disabled by heart disease or association with Al-Anon, or that his name and trademark are not Cornell D.M. Judge Cornish or that this legal and common law name currently should not be registered in the District of Columbia. Moreover, under the **Central Hudson** test, there is no presumption that modifies or shifts the burden of proof under the third and fourth parts or the final prong of the test because that would lead to an unsupervised abuse of discretion, as in the case at hand. There are no scientific studies that even remotely show that membership in Al-Anon alone or in combination with lasting good "affects" (feelings) of heart surgery for fourteen years by scrupulous adherence to an exercise program, and consultation with an Al-Anon sponsor whose goal it was to help petitioner set boundaries of unwillingness to cope with the demands of "pro bono" work in

Maryland, is evidence of anything other than a measured approach to stress reduction. This "health" related life style and quality of life need not require a ban of a lawyer's First Amendment rights, incldng his right of exercising his duty of candor before the U.S. Copyright and Patent and Trademark Offices and before the Maryland Grievance Commission, or truthfully and non-misleadingly publicizing his correct persona, name and trademark because this ban has no direct effect upon lawyer competence or protection of the public against incompetent and/or disabled lawyers in the District of Columbia. The ban against using his correct persona, name and trademark as mentioned does not directly affect professional standards one way or the other. It affects them only through the reactions it is assumed people will have to the free flow of information about a persona and his correct name and trademak as a patent, copyright and/or trademark attorney.

Indeed, false and misleading publicity will result from the reverse palming off and unclean hands causing the ban.

The ban is undeniably more extensive than necessary to serve the State's interest. Thus, the ban must be "narrowly tailored".

There is, of course, an alternative to the highly paternalistic, presumptively biased animus and unclean hands behind the District's orders not to use the name "Judge" in their order. This can simply be to provide the petitioner with a show cause hearing, with a possibility of a full hearing, as was done by the U.S. Tax Court, which has withtheld disciplining the petitioner; accept the lawyer's correct name, as was done by the U.S. Tax Court and the U.S. District Court of the Southern District of New York and accept the petitioner's offer to become inactive in the district of Columbia by affidavit under his current name without any discipline. They could even hold any discipline in abeyance, such as they did in their order of

February 20, 1996, as the Tax Court has done. A bond could be requested, as in any custodia legis case.

The District did not offer any hypothesis concerning misconduct, and there is lack of jurisdiction to do so in the face of a presumption that the federal question involved is preempted by the federal government under Article 1, Section 8. The District offers one, and only one, justification for its ban, namely: "D.C. Bar Rule XI, §13(e) (suspension upon a claim of disability by attorney)." Here, however, there is no claim of disability by petitioner. Indeed, he has renounced and repudiated any such claim, and the cases cited by the Respondent, are devoid of any such repudiation and renouncement. Indeed, the cases cited by respondent can easily be distinguished from this subject case because they lack any repudiation and renouncement of suspension upon claim of disability by attorney in the District of Columbia.

There is no evidence to support the conclusion that petitioner's desire not to cope with the demands of "pro bono" law outside the field of patent, copyright and trademark law in Maryland was a claim of disability in either Maryland or the District of Columbia. Indeed, the choice of words by Bar Counsel to equivocally express evidence that Petitioner suffers from lasting good affects from open heart surgery in 1982, is consistent with bias, duress and lack of candor and unclean hands by Bar Counsel relative to the stress of lawyers and judges now on the Maryland Court of Appeals who have had heart bypass surgery and who daily deal with the effects of alcohol in their lives. Indeed, those judges, like the petitioner, have restored the stress free quality of their lives to a level it would have had without heart disease and the affects (second order, indirect feelings) of alcohol on their lives, because the lasting **affects** include a strong motivation to adhere to a stress free life, a scrupulous and rigorous exercise program,

and membership in Al-Anon, all strong indicators of good health and lack of disability.

Bar Counsel's goal in the District of Columbia is to avoid the burden of proof in a show cause hearing by unilaterally banning petitioner's speech by prior restraint, by a misleading reverse palming off, by unclean hands, and by a misleading massage of the language used in the irregular joint petition filed in Maryland.

Leaving aside the unreasonable nature of this goal, the fit between the District's method and this particular goal, and also the lack of similarity and fit between the abandoned and unabandoned names and trademarks, is significant.

C. The District Of Columbia's Ban On Publicity And Speech Does Not Directly Advance Its Interest In Protecting The Public To A Material Degree Thereby Failing The Third Part Of The Central Hudson Test.

D. The District of Columbia's Ban On Lawful, Truthful And Non-misleading Publicity And Speech Is More Extensive Than Necessary Under Article 1, Section 8 And The First Amendment Of The U.S. Constitution.

E. The Court of Appeals Conflicted With The Decisions Of This Court Under the Fourteenth Amendment.

In each of the cases cited in *Liquormart Inc., v. Rhode Island,* No. 94-1140, decided May 13, 1996, the court declined to accept at face value the profferred justification for the State's regulation or lack of regulation and its abuse of discretion, but examined carefully the relationship between the asserted goal and the speech restriction used to reach that

goal so that the speech restriction directly advances its interest and is narrowly tailored.

Also, the reciprocal discipline is not functionally identical because there is no "suspension upon a claim of disability by attorney" in either Maryland or the District of Columbia. *In re O'Brien*, 665 A.2d 662 (D.C. 1995); *In re Samuels*, 648 A.2d 943 (D.C. 1994); *In re Gardner*, 640 A.2d 693 (D.C. 1994); *In re Zilberberg*, 612 A.2d 832 (D.C. 1992); *In re Velasquez*, 507 A.2d 145 (D.C. 1986). *Compare Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626 (1985); *Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976), and *Bates v. State Bar of Arizona*, 433 U.S. 365, 353-354 (1977).

Conclusion

The District of Columbia Court of Appeals improperly ordered, in conflict with the U.S. Tax Court and the District Court for the Southern District of New York, and in conflict with the First and Fourteenth Amendments and Article 1, Section 8 of the U.S. Constitution that it could, without the show cause hearing requested by petitioner, reciprocally ban petitioner's lawful, truthful and non-misleading speech by prior restraint, or punish his First Amendment rights, including exercising his duty of candor, or in the truthful and non-misleading use of his correct legal, religious and common law name and trademark all with a procedure so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; all with such an infirmity of proof establishing misconduct or disability as to give rise to the clear conviction that the Court could not, consistently with its duty, accept as final the conclusion on that subject; all so that the imposition of the same discipline by reverse palming off would result in a grave injustice; all warranting a substantially different discipline or

result in the District of Columbia; and all because there any question of misconduct is a federal question that is preempted in the District of Columbia. The petitioner respectfully submits that his petition for a **Writ of Certiorari** to the Court of Appeals of The District of Columbia should be granted.

Cornell D.M. Judge Cornish
Pro Se and Pro Hac Vice
1101 New Hampshire Ave., NW
Suite 301
Washington, D.C. 20037
(202) 429-9705

Date: July 31, 1996

Supreme Court, U.S.
FILED

96 161 JUL 31 1996

OFFICE OF THE CLERK

No.

IN THE
Supreme Court of the United States
October Term, 1996

CORNELL D. CORNISH,

Petitioner,

v.

DISTRICT OF COLUMBIA
COURT OF APPEALS

and

BOARD ON PROFESSIONAL RESPONSIBILITY,

Respondents.

RECEIVED
HAND DELIVERED
JUL 31 1996
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Petition For A Writ of Certiorari
To The District of Columbia Court of Appeals

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

Cornell D.M.Judge Cornish
(Counsel Pro Se and Pro Hac
Vice For Petitioner)
Suite 301
1101 New Hampshire Ave., NW
Washington, D.C. 20037
(202) 429-9705

Date: July 31,1996

CASILLAS PRESS, INC., WASHINGTON, D.C. 20036 - (202) 223-1220

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APPENDIX A

FILED
SEP 13 1990
Superior Court
of the District of Columbia
Washington, DC

Superior Court of the District of Columbia
Civil Division

ORDER FOR CHANGE OF NAME

IN RE: Cornell D. Cornish

C.A. No. 90-CA-08850

COMPLETE NAME OF APPLICANT: Cornell D. Cornish

Upon consideration of the application for the change of name filed herein and no objections having been made and proof of publication having been made and filed herein, and all other requirements appear having been met, it is this 13th day of September, 1990,

ORDERED BY THE COURT that the said application be and hereby is granted, and it is further,

ORDERED BY THE COURT that henceforth and hereafter Cornell D. Cornish be known as Cornell Daniel Michael Judge Cornish

/s/ illegible

JUDGE

JULY 11, 1991
illegible

APPENDIX B

IN THE COURT OF APPEALS OF MARYLAND
Misc.Docket (Subtitle BV)
No. ___
September Term, 1995

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND
100 Community Place
Suite 3301
Crownsville, Maryland 21032

Petitioner

v.

CORNELL D. CORNISH
1101 New Hampshire Avenue, N.W., Suite 301
Washington, D.C. 20037

CONSENT TO INACTIVE STATUS

Comes now the Petitioner, the Attorney Grievance Commission of Maryland, and the Respondent, Cornell D. Cornish, and jointly petition this Court to permit the Respondent to be placed on inactive status.

1. Respondent was admitted to the Maryland bar on November 9, 1956.

2. A complaint is pending against Respondent concerning the handling of a patent application and Respondent has taken steps to resolve that matter.

3. During the course of our investigation Respondent has advised that he does not actively engage in practice, occasionally take some "pro bono" work, but that he suffers lasting affects from open heart surgery in 1982 and he goes to

rehabilitation every day and, rests for some time thereafter. In addition he participates in Al Anon attending three (3) or four (4) meetings a week as well as meeting with a sponsor.

4. Respondent is 66 years of age and currently draws Social Security and a pension from his employment with the federal government.

5. Respondent admits that at the present time he is unable and has no desire to cope with the demands of the practice of law and agrees that it is in his best interest to be placed on inactive status.

WHEREFORE, Petitioner and Respondent pray:

A. That Respondent be placed on inactive status by this Court.

B. This Court that such other and futher relief as to the Court shall seem just and proper in the cause.

	illegible
Cornell D. Cornish, Esq. 1101 New Hampshire Ave., N.W., Suite 301 Washington, D.C. 20037	Melvin Hirshman Bar Counsel Attorney Grievance Commission of Maryland 100 Community Place Suite 3301 Crownsville, Maryland 21032

Date

APPENDIX C

THE GEORGE WASHINGTON UNIVERSITY
WASHINGTON DC

MEDICAL CENTER
Department of Medicine
February 12, 1996

TO WHOM IT MAY CONCERN

The attached exercise test of Judge Cornell Cornish demonstrates a superior level of physical fitness, which places him in the top 5 percentile for his age group, attributable to longterm adherence to his maintenance exercise program.

There were no exercise-induced symptoms or ECG changes indicative of angina: and Cardiovascular prognosis is excellent.

Sincerely,
/s/ illegible
Patrick Gorman M.D.
Director, Cardiac
Rehabilitation

Exercise Stress Test Report

Date:02/06/96

Patient: Cornish, Cornell D.M. Judge
Date of Birth: 05/04/29
Diagnosis: CAD Physician: Patrick A. Gorman, M.D. #
Med Record #:0986843 Location: Account #: 71210793

Test Performed: Exercise-Bruce protocol

Conclusion
1. Above average exercise capacity.
2. Normal heart rate response to exercise.
3. Normal blood pressure response to exercise.
4. No chest pain at peak exercise.
5. Arrhythmias: None
6. ST changes: No ST changes with exercise.

A. Lopez, M.D. unconfirmed

Previous Test: None.

Medications: ASA

Pre-Exercise ECG Interpretation: Normal sinus rhythm, Incomplete right bundle branch block

Procedure:

(1) The attached Exercise Test Data Sheet shows the protocol used.

(2) Observations made at end of each minute of exercise/recovery.

WORKLOAD

Peak Exercise: 13.5 METs 5 mph 18 %grade

DURATION OF FINAL STAGE:

Exercise Time: 13 min. sec.

Reason for Termination of Exercise: Fatigue

	Resting	Peak Exercise	Max. Predicted
HEART RATE:	72	135	154
BLOOD PRESSURE:	128/90	170/80	

Exercise Induced Symptoms/Signs: No chest pain

ST Changes:

Arrhythmias: None

THE GEORGE WASHINGTON UNIVERSITY MEDICAL CENTER
Cardiac Non-Invasive Laboratory
901 23rd St., NW, #2440N, Washington, D.C. 20037
(202) 994-3909 FAX (202) 994-illegible

APPENDIX D

COURT OF APPEALS
THE DISTRICT OF COLUMBIA

No.

In The Matter of
Cornell D. Cornish, Esquire
Respondent
A Member of the Bar of the District of Columbia

AFFIDAVIT

The undersigned, Julia Frank, M.D., declares and swears as follows:

1. I am a licensed physician in the District of Columbia and that I practice as a medical doctor in the Department of Psychiatry and Behavioral Sciences of The George Washington Medical Center, 2150 Pennsylvania Avenue, N.W., Washington, D.C. 20037 (202) 994-1733;

2. On February 14 and 27, 1996, I interviewed Cornell D.M. Judge Cornish, whose address is Suite 301, 1101 New Hampshire Ave., N.W., Washington, D.C. 20037,

3. I have reviewed the records of a stress test administered on 2/6/96 to said Cornell D.M. Judge Cornish, as well as records of blood tests administered to him in 1994 and 1995 in connection with his rehabilitation from heart disease;

4. The records reviewed by me show evidence only of a mild cardiac defect which should have no bearing on his ability to practice law;

5. I see no current symptoms of alcohol or drug abuse.

Further, deponent saith not.

/s/ Julia Frank, md

Julia Frank, M.D.
The George Washington
University Medical Center
2150 Pennsylvania Ave.
Washington, D.C. (NW)
(202) 994-1733

Date:
District of Columbia)

) ss:
City of Washington)

Sworn to and subscribed before me this 8th day of March, 1996.

Kimberly F. illegible

Notary Public
My Commission expires
March 16, 2000

APPENDIX E

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND	*	In the
	*	Court of Appeals
	*	of Maryland
Petitioner	*	Misc.Docket
v.	*	(Subtitle BV)
CORNELL D. CORNISH	*	No. 44
Respondent	*	September Term 1995

ORDER

The Court having considered the request for dissolution or amendment of inactive status of respondent and the response filed thereto by the Attorney Grievance Commission, it is this 7th day of February, 1996,

ORDERED, by the Court of Appeals of Maryland, that the request for dissolution or amendment of inactibe status be, and it is hereby, **DENIED.**

/s/ ROBERT C. MURPHY
CHIEF JUDGE

APPENDIX F

ATTORNEY GRIEVANCE COMMISSION OF MARYLAND 100 Community Place Suite 3301 Crownsville, Maryland 21032 Petitioner	*	IN THE COURT OF APPEALS OF MARYLAND Misc. Docket (Subtitle BV) No. 39 September Term, 1995
v.	*	
CORNELL D. CORNISH 1101 New Hampshire Ave., N.W. Suite 301 Washington, D.C. 20036 Respondent	*	RECEIVED Dec 5 1995 Attorney Grievance Commission

ORDER

This matter came before the Court on a Petition filed jointly by the Attorney Grievance Commission and the respondent, Cornell D. Cornish, for the respondent to be placed on inactive status. The Court having considered the Petition, it is this 4th day of December, 1995,

ORDERED, by the Court of Appeals of Maryland, that the Petition for Inactive Status be and it is hereby GRANTED, and the respondent shall be placed on inactive status from the practice of law, and it is further

ORDERED, that the Clerk of this Court shall remove the name of Cornell D. Cornish from the register of attorneys in this Court and certify that fact to the Trustees of the Clients' Security Trust Fund and the clerks of all judicial tribunals in this State in accordance with Rule BV13.

/s/ ROBERT C. MURPHY
CHIEF JUDGE

APPENDIX G

DISTRICT OF COLUMBIA COURT OF APPEALS

FILED
May 23, 1996
COURT OF APPEALS

No. 95-BG-1830

In the Matter of
CORNELL D. CORNISH, ESQUIRE
A Member of the Bar of the
District of Columbia
Court of Appeals

BDN: 507-95

BEFORE: Ferren and King, Associate Judges; and Kern, Senior Judge.

ORDER

On consideration of respondent's request for reconsideration of this Court's order of April 15, 1996, and for other relief, and the opposition thereto, it is

ORDERED that respondent's request for reconsideration and for other relief is denied.

PER CURIAM

Copies to:

Cornell D. Cornish, Esquire
1101 New Hampshire Avenue, N.W.
Suite 301
Washington, D.C. 20037

Hamilton P. Fox, Esquire
Chair
Board on Professional Responsibility

Leonard H. Becker, Esquire
Bar Counsel
Office of Bar Counsel

emb

APPENDIX H

DISTRICT OF COLUMBIA COURT OF APPEALS BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of:	)	
	)	
CORNELL D. CORNISH	)	Bar Docket No. 507-95
	)	
Respondent	)	

ORDER

This is a reciprocal matter from the State of Maryland. On December 4, 1995, Respondent was placed on inactive status by order of the Court of Appeals of Maryland. The order placing him on inactive status was reported to the District of Columbia Court of Appeals. Respondent filed a brief in the D.C. Court of Appeals seeking relief in several areas, including the appointment of counsel. By order dated April 15, 1996, the Court of Appeals suspended Respondent, pursuant to D.C. App. R. XI, Section 11(d), and directed the Board of Professional Responsibility to recommend promptly whether reciprocal discipline should be imposed. The Court of Appeals also referred to the Board Respondent's Motion for Appointment of Counsel. The Executive Attorney, prior to the action of the Court of Appeals, had written Respondent a letter dated April 1, 1996, explaining to him the Board rules for appointment of counsel. In addition to attaching copies of the relevant rules, she explicitly informed him that he must file the appropriate motion and an affidavit of indigency and requested a copy of his most recent federal or state income tax return or other document certifying his gross income for the past 12 months.

Respondent replied by letter dated April 4, 1996 requesting that counsel be appointed so that counsel could draw up the affidavit and motion necessary for the appointment of

counsel. Enclosed was one page from his 1994 income tax return that indicated the he had self-employment income of slightly more than $1,000. There was no affidavit of indigency, and he did not enclose the complete return.

The Board is unwilling to appoint counsel for respondents who fail to file the requisite affidavit in support of indigency. This failure plus the failure to submit a complete copy of his most recent tax return gives us concern whether Respondent is in fact indigent. The affidavit is a relatively simple form, that would take no more time to execute than the letter that Respondent has already filed with the Board, and much less time to execute than the brief of 21 pages plus attachments, which Respondent filed with the Court of Appeals.

Upon consideration of the foregoing it is hereby

ORDERED that appointment of counsel for Respondent is denied, without prejudice to reconsideration should Respondent file the required affidavit and his most recent tax return.

BOARD ON PROFESSIONAL RESPONSIBILITY

By: /s/ Hamilton P. Fox, III
Hamilton P. Fox, III
Chair

Dated: May 20, 1996

APPENDIX I

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 95-BG-1830

FILED
April 15, 1996
COURT OF APPEALS

In the Matter of
CORNELL D. CORNISH, ESQUIRE
A Member of the Bar of the
District of Columbia
Court of Appeals

BEFORE: Ferren and King, Associate Judges; and Kern, Senior Judge.

O R D E R

On consideration of respondent's motion to amend the proposed order the changing respondent's name from Cornell D. Cornish to Cornell D.M. Judge Cornish and motion to appoint attorney for respondent and third amended opposition to proposed order suspending respondent from the practice of law in the District of Columbia pending final disposition of this proceeding and answer to the proposed order to show cause and allowing respondent's name to be voluntarily removed from the register of attorneys allowed to practice in the District of Columbia and Bar Counsel's response thereto, and on further consideration of this Court's order of February 20, 1996, which held in abeyance Bar Counsel's request that the Court issue an order imposing a temporary suspension of Cornell D. Cornish, Esquire, a member of the Bar of the District of Columbia, pursuant to Rule XI, § 11(d) of the Rules Governing the Bar of the District of Columbia, it is

ORDERED that respondent's motion to amend the proposed order by changing respondent's name from Cornell D. Cornish to Cornell D.M. Judge Cornish is denied. It is

FURTHER ORDERED that respondent's motion for appointment of counsel is referred to the Board on Professional Responsibility. It is

FURTHER ORDERED that respondent's motion to voluntarily remove his name from the register of attorneys admitted to practice in the Districtof Columbia is denied. It is

FURTHER ORDERED that portion of this Court's order which held in abeyance Bar Counsel's request that the Court issue an order suspending respondent from the practice of law in the District of Columbia is hereby vacated. It is

FURTHER ORDERED that the respondent Cornell D. Cornish is hereby suspended from the practice of law in the District of Columbia pending final disposition of this proceeding, and it is

FURTHER ORDERED that Bar Counsel inform the Board on Professional Responsibility of his position regarding reciprocal discipline within 30 days of the date of this order. Thereafter, respondent shall show cause before the Board on Professional Responsibility, if cause there be, within 10 days why identical greater or lesser discipline should not be imposed in the District of Columbia, it is

FURTHER ORDERED that the Board on Professional Responsibility is directed to recommend promptly thereafter to this Court whether identical, greater or lesser discipline should be imposed as reciprocal discipline or whether the Board, elects to proceed *de novo* pursuant to Rule XI, § 11. It is

FURTHER ORDERED that respondent's attention is drawn to the requirement of D.C. App. Rule XI, § 14 relating to suspended attorneys and to the provisions of § 16 (c) dealing with the timing of eligibility for reinstatement as related to

compliance with § 14, including the filing of the required affidavit. It is

FURTHER ORDERED that the Clerk shall cause a copy of this order and the order of the Court of Appeals of Maryland to be directed to the Chair of the Board on Professional Responsibility and transmitted to the respondent. It is

FURTHER ORDERED that Bar Counsel advise the Court if the matter is concluded without the necessity of further Court action.

PER CURIAM

Copies to:

Cornell D. Cornish, Esquire
1101 New Hampshire Avenue, N.W.
Suite 301
Washington, D.C. 20037

Hamilton P. Fox, Esq.
Chair
Board on Professional Responsibility
515 5th Street, N.W.
Building A, Room 101
Washington, D.C. 20001

Leonard H. Becker, Esquire
Bar Counsel
Office of Bar Counsel
515 5th Street, N.W.
Building A, Room 127
Washington, D.C. 20001

APPENDIX J

DISTRICT OF COLUMBIA COURT OF APPEALS

FEB 20 1996

No. 95-BG-1830

In the Matter of
CORNELL D. CORNISH, ESQUIRE
A Member of the Bar of the
District of Columbia
Court of Appeals **BDN: 507-95**

BEFORE: Ferren and King, Associate Judges; and Kern, Senior Judge.

O R D E R

On consideration of Bar Counsel's petition that the Court impose a temporary suspension of respondent, a member of the Bar of the District of Columbia, pursuant to Rule XI, § 11 (d) of the Rules Governing thhe Bar of the District of Columbia, respondent's initial opposition and request for an extension of time to obtain counsel, respondent's amended opposition, request for an extenbsion of time to obtain counsel, and request for oral argument, and Bar Counsel's reply thereto, it is

ORDERED that respondent's motion for an extention of time to obtain counsel is granted and respondent shall notify this Court within 30 days from the date of this order as to the identity of counsel for respondent, along with any additional responsive pleadings pertaining to the Court's imposition of a temporary suspension of respondent, It is

FURTHER ORDERED that Bar Counsel's request that the Court issue an order suspending respondent from the practice of law in the District of Columbia shall be held in abeyance pending respondent's compliance with this order. It is

FURTHER ORDERED that respondent's request for oral argument is held in abeyance.

PER CURIAM

Copies to:

Cornell D. Cornish, Esquire
1101 New Hampshire Avenue, N.W.
Susite 301
Washington, D.C. 20037

Hamilton P. Fox, Esquire
Chair
Board on Professional Responsibility

Leonard H. Becker, Esquire
Bar Counsel
Office of Bar Counsel

emb

APPENDIX K

RULE XI,Sec. 11 September 1, 1989

DISTRICT OF COLUMBIA COURT OF APPEALS RULES OF PROFESSIONAL CONDUCT

Section 11 - RECIPROCAL DISCIPLINE.

* * *

(d) TEMPORARY SUSPENSION AND SHOW CAUSE ORDER.

Upon receipt of a certified copy of an order demonstrating that an attorney subject to the disciplinary jurisdiction of this Court has been suspended or disbarred by a disciplining court outside the District of Columbia or by another court in the District of Columbia, the Court shall forthwith enter an order suspending the attorney from the practice of law in the District of Columbia pending final disposition of any reciprocal disciplinary proceeding, and directing the attorney to show cause within thirty days from the date of the order why the identical discipline should not be imposed. The attorney's response to the order to show cause shall be filed with the Board, which for good cause shown may extend the time for filing a response for a period not to exceed thirty days.

* * *

Section 13- INCOMPETENT AND INCAPACITATED ATTORNEYS.

* * *

(d) BURDEN OF PROOF.

In a proceeding under this section seeking an order of suspension, the burden of proof shall be upon the Board. In a proceeding under this section seeking an order terminating a suspension, the burden of proof shall be upon the suspended attorney.

(e) CLAIM OF DISABILITY BY ATTORNEY.

If, in the course of a disciplinary proceeding, the attorney claims to be suffering from a disability because of mental or physical illness or infirmity, or because of addiction to drugs or intoxicants, which makes it impossible for the attorney to present an adequate defense, the Court shall enter an order immediately suspending the attorney from the practice of law until a determination is made of the attorney's capacity to practice law in a proceeding under subsection (c) of this section.

* * *

APPENDIX L

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY

In the Matter of	)	
	)	
CORNELL D. CORNISH,	)	Docket No. 507-95
	)	
Respondent,	)	

REPORT AND RECOMMENDATION OF THE
BOARD ON PROFESSIONAL RESPONSIBILITY

Respondent, a member of the District of Columbia and State of Maryland Bars, was placed on inactive status by consent in Maryland by Order of the Court of Appeals of Maryland dated December 5, 1995. The Maryland Order was based on a Consent to Inactive Status filed by Maryland Bar Counsel and Respondent. On April 15, 1996, the District of Columbia Court of Appeals entered an Order suspending Respondent from practice in this jurisdiction and ordering the Board on Professional Responsibility to recommend to the Court whether reciprocal discipline should be imposed, or whether the Board elects to proceed *de novo* pursuant to Rule XI, section 11.[1] For the reasons stated below, the Board recommends that the Court impose reciprocal discipline of indefinite suspension with reinstatement conditioned upon a showing of fitness, pursuant to D.C. Bar Rule XI, section 13(e).

The Consent to Inactive Status relates that Respondent was the subject of a Maryland complaint concerning Respondent's handling of a patent application, and that Respondent had taken

[1] The Court's April 15, 1996 Order also referred to the Board Respondent's motion for appointment of counsel. On May 20, 1996, the motion was denied without prejudice to reconsideration should Respondent file the affidavit and tax return required by the Board to support appointment of counsel at the Board's expense. Respondent has made no further filings.

steps to resolve that matter. Respondent advised Maryland Bar Counsel during the couse of the investigation that he does not actively engage in practice, but occasionally engages in some *pro bono* work. Respondent is retired from employment with the federal government. The Consent to Inactive Status states that Respondent "suffers from lasting [e]ffects from open heart surgery in 1982 and . . . goes to rehabilitation every day and rests for some time thereafter. In addition he participates in Al Anon attending three (3) or four (4) meetings a week as well as meeting with a sponsor." In the Consent to Inactive Status, "Respondent admits that at the present time he is unable and has no desire to cope with the demands of the practice of law and agrees that it is in his best interest to be placed on inactive status." Respondent and Maryland Bar Counsel agreed that Respondent should be placed on inactive status. The Court of Appeals of Maryland so ordered, with no time limit for reapplication to practice. Under the Maryland Bar Rules, Respondent has the burden of reapplying and showing his fitness by clear and convincing evidence. Maryland Rules of Procedure, Chapter 1100, BV14.d.4.

The Court has treated other cases in which respondents took inactive status in Maryland due to disability while a disciplinary matter was pending as warranting reciprocal discipline. *In re Clancy,* No.94-BG-1549, *et al.* (D.C. May 9, 1996); *In re O'Brien,* 665 A.2d 662 (D.C. 1995); *In re Samuels,* 648 A.2d 943 (D.C. 1994). In those cases,the functionally identical discipline — indefinite voluntary suspension with reinstatement conditioned upon a showing of fitness — has been imposed pursuant to D.C. Bar Rule XI, section 13(e) (suspension upon a claim of disability by attorney). Bar Counsel recommends the same result in this matter, and Respondent has not made any filing before the Board to demonstrate that any exception to the imposition of reciprocal discipline should apply. D.C. Bar Rule XI, section 11(c).

The Board accordingly recommends that reciprocal discipline of an indefinite suspension be imposed in the District of Columbia, with reinstatement to be governed by the terms of D.C. Bar Rule XI, section 13(g) (attorney eligible for reinstatement after one year upon a showing, by clear and convincing evidence, that the disability has ended and the attorney is fit to practice law). The Board recommends that the one-year period run from the date Respondent files an affidavit pursuant to Rule XI, section 14(g).

BOARD ON PROFESSIONAL RESPONSIBLITY

By: /s/ Patricia A. Brannan
Patricia A. Brannan

Dated: July 12, 1996

All members of the Board concur in this Report and Recommendation.

(3)

Supreme Court, U.S.
FILED
AUG 29 1996
CLERK

No. 96-161

IN THE

Supreme Court Of The United States

October Term, 1996

CORNELL D. CORNISH,

Petitioner,

vs.

DISTRICT OF COLUMBIA COURT OF APPEALS, *et al.*,

Respondents.

On Petition for a Writ of Certiorari
to the District of Columbia Court of Appeals

BRIEF FOR DISTRICT OF COLUMBIA BOARD ON PROFESSIONAL RESPONSIBILITY IN OPPOSITION

*Leonard H. Becker
Bar Counsel

Michael S. Frisch
Senior Assistant Bar Counsel

Office of Bar Counsel
515-5th St., N.W., Room 127
Washington, D.C. 20001
(202) 638-1501

**Counsel of Record for Respondent District of Columbia Board on Professional Responsibility*

Balmar Legal Publishing Department, Washington, DC (202) 682-9800

19pp

QUESTION PRESENTED

Whether the District of Columbia Court of Appeals correctly imposed an order of interim suspension upon Petitioner, pending review and determination of appropriate final discipline, based upon an order of the Maryland Court of Appeals directing his indefinite suspension from the Maryland Bar on the ground of a medical disability.

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No. 96-161

IN THE

Supreme Court Of The United States

October Term, 1996

CORNELL D. CORNISH,

Petitioner,

vs.

DISTRICT OF COLUMBIA COURT OF APPEALS, *et al.*,

Respondents.

On Petition for a Writ of Certiorari
to the District of Columbia Court of Appeals

BRIEF FOR DISTRICT OF COLUMBIA BOARD ON PROFESSIONAL RESPONSIBILITY IN OPPOSITION

OPINION BELOW

The order of the District of Columbia Court of Appeals dated April 15, 1996, directing Petitioner's interim suspension pending the determination of final discipline and denying various motions of Petitioner (Pet. App. 14a), is unpublished.

JURISDICTION

The order of the court of appeals for which review is sought was entered April 15, 1996. Petitioner filed a motion for reconsideration, which the court denied by order entered May 23, 1996. Petitioner filed his petition for writ of certiorari on or about July 31, 1996 (the precise date is unknown to Respondents). Jurisdiction is asserted under various inapplicable statutes.

STATUTE AND RULES

The pertinent statute conferring jurisdiction on the court of appeals to discipline members of its Bar, and relevant rules of professional conduct and of procedure prescribed by the Board on Professional Responsibility, are set out in an Appendix to this brief.

STATEMENT OF PROCEEDINGS BELOW

Petitioner is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on motion on November 4, 1982. He also is a member of the Bar of Maryland. On December 1995, he was placed on inactive status by order of the Court of Appeals of Maryland (the "Maryland Court"). *Attorney Grievance Commission v. Cornish*, Miscellaneous Docket (Subtitle BV) No. 39 (Sept. Term, 1995) (Pet. App.10a).[1]

The order placing Petitioner on inactive status was reported to the District of Columbia Court of Appeals. On April 15, 1996, the court entered an order suspending Petitioner pursuant to D.C. App. R. XI, § 11(d). The court directed the Board on Professional Responsibility (the "Board") to recommend promptly whether reciprocal discipline should be imposed or whether the Board, instead, elected to proceed *de novo* (Pet. App. 14a). The court also denied Petitioner's motions to amend the order to reflect his change of name and to permit him to remove his name voluntarily from the register of attorneys admitted to practice in the District of Columbia.

On May 23, 1996, the court denied Petitioner's motion for reconsideration of its April 15, 1996 order (Pet. App. 11a).[2]

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[1] Throughout the proceedings below, Petitioner is referred to as the "Respondent."

[2] On July 16, 1996, the Board filed its report, recommending that the court of appeals impose reciprocal discipline of indefinite suspension with

ARGUMENT

1. The order of the court below plainly is correct and does not warrant this Court's review. The record in Maryland demonstrated that Petitioner was the subject of a complaint concerning the handling of a patent application. Petitioner admitted that he suffered lasting effects from surgery and participated in Al Anon. He further admitted that he was unable to cope with the demands of law practice and had no wish to do so. Maryland Bar Counsel and Petitioner agreed that Petitioner should be placed on inactive status.

Under D.C. App. R. XI, § 11(b), the District of Columbia Bar Counsel is required to submit certified copies of "all orders of discipline from other disciplining courts." The Maryland Court of Appeals is a disciplining court with authority to suspend or disbar. *See* D.C. App. R. XI, §11(a). The Maryland rules equate orders of suspension and disbarment with orders placing attorneys on inactive status. Md. Rule BV 13a1. In either event, the Clerk of the Maryland Court "shall strike the name of the attorney from the register. . . ." The burden is on Petitioner to terminate his inactive status. Rule BV 14. Thus, the Maryland order constitutes discipline for purposes of Rule XI. *In re O'Brien*, 665 A.2d 662 (D.C. 1995) (per curiam); *In re Samuels*, 648 A.2d 943 (D.C. 1994) (per curiam).

Reciprocal (*i.e.*, identical) discipline is imposed unless the attorney demonstrates, by clear and convincing evidence, that one or more of the exceptions enumerated in Rule XI applies. D.C. App. R. XI, § 11(c). Here, Maryland followed a procedure similar to that prescribed in D.C. App. R. XI, §§ 13(b) & (c). While under investigation for misconduct, Petitioner sought and was granted inactive status. The Mary-

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reinstatement conditioned upon a showing of fitness pursuant to D.C. App. R. XI, § 13(e).

land Court concluded that Petitioner's health problems mandated inactive status.

In an original case arising under D.C. App. R. XI, § 13, a disability suspension would be appropriate on this record. *See In re Samuels, supra.* With due deference to Maryland's determination to place Petitioner on inactive status for health reasons, reciprocal discipline is appropriate. *In re Gardner*, 650 A.2d 693 (D.C. 1994); *In re Zilberberg*, 612 A.2d 832 (D.C. 1992); *In re Velasquez*, 507 A.2d 145 (D.C. 1986) (per curiam) (articulating standard of deference to foreign jurisdiction's factual findings in reciprocal discipline matters).

2. Petitioner also appears to complain that the court of appeals denied his motion to change his name to include "Judge" on the court's order. The court's order bears Petitioner's name as it is reflected in the records of the District of Columbia Bar, based upon Petitioner's registration statement. Although Petitioner secured an order of the District of Columbia Superior Court changing his name in September 1990, the court was not required to ignore the Bar's records in administering its rules governing the Bar's members.

3. To the extent that Petitioner appears to complain of the actions of the Maryland Court, the present proceeding is not an appropriate occasion to litigate the merits of the Maryland Court's order. As we understand that order, Petitioner is free to seek reinstatement to active membership before the Maryland Court at any time. If he obtains a vacatur of the Maryland Court's order of suspension, he may apply for removal of his disability suspension in the District of Columbia. *In re Chisholm*, No. 94-BG-818 (D.C. Mar. 7, 1995).

4. In any event, this Court is without jurisdiction to consider the order for which review is sought. Under 28 U.S.C. § 1257(a), "*final* judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari" (emphasis

added).[3] The order of the court of appeals is interlocutory in form and function. The order imposes an interim suspension upon Petitioner, pending the report and recommendation of the Board and the court's further consideration of appropriate final discipline. *See* D.C. App. R. XI, § 11. The Board now has filed its recommendation, and the matter is before the court of appeals for its final determination.[4]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: August, 1996

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[3] For purposes of Section 1257, the term "highest court of a State" includes the court below. 28 U.S.C. § 1257(b).

[4] In *Richardson v. District of Columbia Court of Appeals*, 83 F.3d 1513 (D.C. Cir. 1996), where the attorney brought a purported federal Civil Rights Act action to challenge a similar order of interim suspension, the federal court of appeals, in upholding the district court's dismissal of the civil complaint, concluded that the lower court could not entertain the complaint consistently with the *Rooker-Feldman* doctrine, whether the order sought to be reviewed was characterized as interlocutory or final. *See District of Columbia v. Feldman*, 460 U.S. 462, 476 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415 (1923).

STATUTES AND RULES

District of Columbia Code, Sec. 11-2502:

> "The District of Columbia Court of Appeals may censure, suspend from practice, or expel a member of its bar for crime, misdemeanor, fraud, deceit, malpractice, professional misconduct, or conduct prejudicial to the administration of justice. A fraudulent act or misrepresentation by an applicant in connection with this application or admission is sufficient cause for the revocation by the court of such person's admission." (July 29, 1970, 84 Stat. 521, Pub. L. 91-358, title I, Sec. 111; 1973 Ed., Sec. 11-2502; June 13, 1994, Pub. L. 103-266, Sec. 1(b)(112), 108 Stat. 713.)

District of Columbia Court of Appeals Rule XI Governing the Bar, Sec. 11:

> RECIPROCAL DISCIPLINE
>
> (a) DEFINITION
>
> As used in this section, "disciplining court" shall include any court of the United States as defined in Title 28, Section 451 of the United States Code, the highest court of any state, territory, or possession of the United States, and any other agency or tribunal with authority to disbar or suspend an attorney from the practice of law in any state, territory, or possession of the United States.
>
> (b) NOTIFICATION
>
> It shall be the duty of Bar Counsel to obtain copies of all orders of discipline from other disciplining courts. Upon learning that an attorney subject to the disciplinary jurisdiction of this Court has been disciplined by another disciplining court, Bar Counsel shall obtain a certified copy of the disciplinary order and file it with the Board and with this Court. In addition, any attorney

subject to the disciplinary jurisdiction of this Court, upon being subjected to professional disciplinary action by a disciplining court outside the District of Columbia or by anther court in the District of Columbia, shall promptly inform Bar Counsel of such action.

(c) STANDARDS FOR RECIPROCAL DISCIPLINE

Reciprocal discipline shall be imposed unless the attorney demonstrates, by clear and convincing evidence, that:

(1) The procedure elsewhere was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) There was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistently with its duty, accept as final the conclusion on that subject; or

(3) The imposition of the same discipline by the Court would result in grave injustice; or

(4) The misconduct established warrants substantially different discipline in the District of Columbia; or

(5) The misconduct elsewhere does not constitute misconduct in the District of Columbia.

Unless there is a finding by the Board under (1), (2), or (5) above that is accepted by the Court, a final determination by a disciplining court outside the District of Columbia or by another court in the District of Columbia that an attorney has been guilty of professional misconduct shall conclusively establish the misconduct for the

purpose of a reciprocal disciplinary proceeding in this Court.

(d) TEMPORARY SUSPENSION AND SHOW CAUSE ORDER

Upon receipt of a certified copy of an order demonstrating that an attorney subject to the disciplinary jurisdiction of this Court has been suspended or disbarred by a disciplining court outside the district of Columbia or by another court in the District of Columbia, the Court shall forthwith enter an order suspending the attorney from the practice of law in the District of Columbia pending final disposition of any reciprocal disciplinary proceeding, and directing the attorney to show cause within thirty days form the date of the order why the identical discipline should not be imposed. The attorney's response to the order to show cause shall be filed with the Board, which for good cause shown may extend the time for filing a response for a period not to exceed thirty days.

(e) RECOMMENDATION BY THE BOARD

Promptly after the attorney's response to the order to show cause is filed or, if no response is filed, promptly after the time for filing a response has expired, the Board shall recommend to the Court whether reciprocal discipline should be imposed. If no order to show cause has been issued, the Board shall recommend to the Court whether reciprocal discipline should be imposed promptly after receiving a certified copy of an order demonstrating that an attorney subject to the disciplinary jurisdiction of this Court has been subjected to professional disciplinary action, other than suspension or disbarment, by a disciplining court outside the District of Columbia or by another court in the District of Columbia. A copy of the Board's recommendation shall be served on the attorney. If the Board recommends to the

Court that reciprocal discipline be imposed, the attorney may file with the Court, within thirty days after service of the Board's recommendation, an opposition to the recommendation stating specific reasons why the imposition of reciprocal discipline would be unwarranted.

(f) ACTION BY THE COURT

(1) When no opposition to the recommendation of the Board has been timely field, and when the Court does not direct that the matter be considered under paragraph (2) of this subsection, the Court will enter an order imposing the discipline recommended by the board upon the expiration of the time permitted for filing a opposition.

(2) In matters not falling under paragraph (1) of this subsection the Court shall impose the identical discipline unless the attorney demonstrates, or the Court finds on the face of the record on which the discipline is predicated, by clear and convincing evidence, that one or more of the grounds set forth in subsection (b) of this section exists. If the Court determines that the identical discipline should not be imposed, it shall enter such order as it deems appropriate, including referral of the matter to the Board for its further consideration and recommendation.

(g) ACTION WHEN RECIPROCAL DISCIPLINE IS NOT RECOMMENDED

If the Board concludes that reciprocal discipline should not be imposed, it shall accept the facts found by the disciplining court unless it has made a finding under

(1), (2), or (5) of subsection (b) of this section. In the absence of such a finding, the Board shall either: (Added (9/1/89)

(1) report to the Court its recommendation as to the appropriate discipline, or (Added 9/1/89)

(2) refer the matter to a Hearing Committee for its recommendation as to the appropriate discipline, or (Added 9/1/89)

(3) direct Bar Counsel to instutute such proceedings as may be appropriate. (Added 9/1/89)

A copy of the Board's decision shall be served on the attorney. If the Board makes a recommendation to the Court under (1) above, the attorney may, within thirty days after service, file with the Court an opposition to the recommendation stating specific reasons why the imposition of reciprocal discipline would be unwarranted. If the Board makes a recommendation to the Court under (1) or directs Bar Counsel to institute proceedings under (3) above, Bar Counsel may, within thirty days after service, file with the Court exceptions to the decision of the Board. (Added 9/1/89)

(h) EFFECT OF STAY OF DISCIPLINE BY DISCIPLINING COURT

If at any time the discipline imposed outside the District of Columbia or by another court in the District of Columbia is stayed, any reciprocal discipline imposed by this Court or by the Board shall be deferred until the stay expires. (Added 9/1/89)

District of Columbia Court of Appeals Rule XI Governing the Bar, Sec. 13:

INCOMPETENT AND INCAPACITATED ATTORNEYS

(a) MENTALLY DISABLED ATTORNEYS

When an attorney has been judicially declared to be mentally incompetent or has been involuntarily committed to a mental hospital as an inpatient, the Court upon proper proof of that fact, shall enter an order suspending that attorney from the practice of law for an indefinite period until further order of the Court. The suspension shall be effective immediately. A copy of the order shall be served upon the attorney, the attorney's guardian, and the director of the mental hospital, if any, in such manner as the Court may direct. If at any time thereafter the attorney is judicially declared to be competent or discharged from inpatient status in the mental hospital, the Court may dispense with further evidence that the disability has ended and may direct the attorney's reinstatement to the practice of law upon such terms as it deems appropriate.

(b) APPLICATION FOR MEDICAL EXAMINATION

If, at any time prior to its final disposition of a disciplinary proceeding, the Board has good cause to believe that the mental or physical condition of the attorney is relevant to the subject matter of the complaint and is a factor which should be considered in the pending proceeding, the Board shall direct Bar Counsel to apply to the Court for an order requiring the attorney to submit the an appropriate examination. The application shall be by petition, with notice to the attorney, and shall be accompanied by a statement from Bar Counsel setting forth

in detail the reasons for the application and the relevance of the examination to the pending proceeding.

(c) ATTORNEYS WHO MAY BE INCAPACITATED

If the Board has reason to believe that an attorney is incapacitated from continuing to practice law because of mental infirmity or illness or because of addiction to drugs or intoxicants, the Board may petition the Court to determine whether the attorney is so incapacitated. Upon the filing of the Board's petition, the court may take or direct such action as it deems appropriate, including the examination of the attorney by such qualified medical expert or experts as it shall designate. If the Court concludes that the attorney is incapacitated from continuing to practice law, it shall enter an order suspending the attorney on the ground of such disability for an indefinite period, effective immediately and until further order of the Court, and any pending disciplinary proceeding against the attorney shall be held in abeyance. In a case of addiction to drugs or intoxicants, the Court alternatively may consider the possibility of probationary conditions. The Court may provide for such notice to the attorney of proceedings in the matter as it deems appropriate and may appoint counsel to represent the attorney if it determines that the attorney is without adequate representation

(d) BURDEN OF PROOF

In a proceeding under this section seeking an order of suspension, the burden of proof shall be upon the Board. In a proceeding under this section an order terminating a suspension, the burden of proof shall be upon the suspended attorney.

(e) CLAIM OF DISABILITY BY ATTORNEY

If, in the course of a disciplinary proceeding, the attorney claims to be suffering from a disability because of mental or physical illness or infirmity, or because of addition to drugs or intoxicants, which makes it impossible for the attorney to present an adequate defense, the Court shall enter an order immediately suspending the attorney from the practice of law until determination is made of the attorney's capacity to practice law in a proceeding under subsection (c) of this section.

(f) ACTION BY THE COURT WHEN ATTORNEY IS NOT INCAPACITATED

If, in the course of a proceeding under this section or a disciplinary proceeding, the Court determines that the attorney is not incapacitated from practicing law, it shall take such action as it deems appropriate, including the entry of an order directing the resumption of the disciplinary proceeding against the attorney.

(g) REINSTATEMENT OF INCAPACITATED ATTORNEY

An attorney suspended under this section may apply for reinstatement once a year, or at such shorter intervals as the Court may direct in its order of suspension or any modification thereof. Upon the filing of such application, the Court may take or direct such action as it deems appropriate, including the examination of the attorney by such qualified medical experts as the Court shall designate. In its discretion, the Court may direct that the expense of such an examination shall be paid by the attorney, and that evidence be presented establishing proof of the attorney's competence and learning in the law, which may include certification by the bar examin-

ers of the attorney's successful completion of an examination for admission to practice. An application for reinstatement under this subsection shall be granted by the Court upon a showing by the attorney, by clear and convincing evidence, that the disability has ended and that the attorney is fit to resume the practice of law.

(h) WAIVER OF DOCTOR-PATIENT PRIVILEGE

The filing of an application for reinstatement under subsection (g) of this section shall constitute a waiver of any doctor-patient privilege with respect to any treatment of the attorney during the period of disability. The attorney shall disclose the name and address of every physician by whom, and every hospital in which, the attorney has been examined or treated since the suspension and shall furnish to the Court written consent to each to divulge such information ad records as may be required by Court-appointed medical experts.